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No. 02-1624

In the

# Supreme Court of the United States

ELK GROVE UNIFIED SCHOOL DISTRICT
and DAVID W. GORDON, Superintendent,

*Petitioners,*

*v.*

MICHAEL A. NEWDOW,

*Respondent.*

On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit

## BRIEF AMICUS CURIAE OF ATHEISTS FOR HUMAN RIGHTS IN SUPPORT OF RESPONDENT

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## QUESTIONS PRESENTED

1. Whether respondent has standing to challenge as unconstitutional a public school district policy that requires teachers to lead willing students in reciting the Pledge of Allegiance.

2. Whether a public school district policy that requires teachers to lead willing students in reciting the Pledge of Allegiance, which includes the words "under God," violates the Establishment Clause of the First Amendment, as applicable through the Fourteenth Amendment.

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## I. INTEREST OF AMICUS[1]

Amicus, Atheists For Human Rights ("AFHR"), is a nonprofit 501(c)(3) organization incorporated in the State of Minnesota. It was founded in February 2002 to meet the need for a proactive atheist organization to provide tangible assistance to groups harmed by authoritarian religions. To date it has 287 supporters (most in Minnesota, but a significant number across the country). AFHR's founders have been active in freethought organizations since the 1980s. One has been a founder and president of another local group (Minnesota Atheists) as well as an organizer, vice president, and president of Atheist Alliance International ("AAI") for most of that time. AFHR is a member society of AAI, which has 48 member societies.

AFHR's most noteworthy activity is its Moral High Ground Project, which provides an annual scholarship to a gay or lesbian atheist student, and helps impoverished women pay for abortions where religion-based restrictions make them all but inaccessible.

Amicus urges this Court to uphold the Ninth Circuit's ruling because the Elk Grove Unified School District policy is unconstitutional under the Establishment and Equal Protection Clauses of the First and Fourteenth Amendments to the United States Constitution, as applied to the States by the Fourteenth Amendment.

The Ninth Circuit's ruling validates a right long denied to the atheistic citizens of this country; that is, to

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[1] Pursuant to Rule 37, amicus AFHR (1) discloses that no counsel for any party in this case authored this brief in whole or in part, and no person or entity, other than amicus curiae, its members, or its counsel, made a monetary contribution to the preparation of submission of this brief, and (2) has obtained and lodged letters from all parties to this case consenting to the filing of this brief with Clerk.

be treated by government as equal citizens and patriots. A Pledge of Allegiance, authorized by the state as the official declaration of national patriotism and recited under state policy on a daily basis throughout all public schools, that includes an allegiance to a deity is clearly derogatory of citizens who are nonbelievers.

## II. SUMMARY OF ARGUMENT

AFHR believes all parents (custodial, non-custodial, foster, etc.) of school children, all taxpayers, all public school teachers, and all those citizens who, like the members of AFHR, wish to recite the Pledge of Allegiance ("Pledge") in patriotic support of our nation, have standing to assert the type of claim now brought by Respondent Newdow.[2]

AFHR also believes that a public school district policy that requires all teachers to lead all students, on a daily basis, in unison before all the class, in reciting the Pledge of Allegiance, as amended by the 1954 Act to insert "under God," is clearly divisive and unconstitutional.

The First Amendment guarantees religious freedom

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[2] AFHR will not address the standing question further because (1) AFHR believes that Respondent has standing for all the reasons presented by Respondent and other amici in support of Respondent; (2) AFHR, unlike Petitioners and the United States Department of Justice, understands that practically anyone should have standing to seek similar relief since (a) requiring teachers (willing and unwilling) to lead the entire class daily in solemn ceremonial recitation of the Pledge as amended by the 1954 Act is an obvious religious pronouncement meant to inculcate children with the majority's religious values, and (b) the hatred of atheists from which the 1954 insertion springs is so evident; and (3) AFHR sees the standing issue as a red herring injected by those in the religious majority to obfuscate the importance of the merits question--that state-church separation is meant to protect religious minorities such as atheists today (and perhaps to protect Bible-believers 100 years from now).



only to every citizen; it does not grant it to the state. Yet there are innumerable instances of state-supported professions and sponsorship of the majority's religious belief, some of which will be cited in this brief. "Under God" in the Pledge is especially egregious because it not only is clearly pejorative of atheists in a state-authorized ritual, but deliberately rejects the original unifying purpose of having our children recite the Pledge to acknowledge and celebrate that ours is "one nation, indivisible, with liberty and justice for all." Adding "under God" served no purpose but to exalt Christian beliefs and biblical theology at the expense of and to harm atheist citizens.

According to a survey by the Pew Research Center on Religion and Politics, approximately 11% of Americans are unbelievers. This makes of the Pledge not a patriotic exercise but a public rejection of the patriotism and equal citizenship of millions of Americans. Pew Research Center for the People and the Press, news release, July 24, 2003 at http://www.people-press.org ("Pew Study") accessed 2-8-04.

"Under God" reinforces and reinvigorates a long history of hostility toward atheists and reflects a desire to harm a group solely because its members have no god beliefs. The truth of the matter is that atheists as a group are exemplary citizens and patriots.

Since at least as early as 1979 (demonstrated by the religiously-motivated terrorist attack upon the United States Embassy in Tehran), the threat to our nation has been and remains, not atheism, but religious fundamentalism.

It is disingenuous to claim that the 1954 Act is constitutional by reason that participation in the Pledge is "optional." Enforcement is only handed from legal authorities to social vigilantes whose power to mandate

conformity can sometimes outweigh that of the state.[3] The public outrage over the Ninth Circuit's decision in the instant case evidences that the opinion of a religious majority can indeed enforce conformity to a state-recommended religious practice.

This Court—the only protection minorities have against the tyranny of the majority—now has an opportunity to correct a half century of harm, to protect all citizens from the introduction of any religious belief into the Pledge, to resolve the uncertainties in this nation's history of and adherence to state-church separation, and to continue the nation's progress in ensuring equality to groups once denied it. The Christian majority in this country has no business hijacking the Pledge and the American patriotism which it represents and falsifying history to justify the 1954 insertion (and history does not support it). No religious majority has that right under the First Amendment—now or in the future. To the contrary, all have the right to be free from such governmental impositions of religious orthodoxy.

This 1954 Act on its face and its legislative history clearly demonstrate that the intent in inserting "under God" into the Pledge was to codify hostility toward atheism. Cold War hostility toward the Soviet Union was warped and misdirected into intolerance for atheism. The clear intent of Congress in inserting "under God" into the Pledge was to proclaim that "An atheistic American, ... is a contradiction in terms." 100 Cong. Rec. 1700 (1954). Congress thus condoned, ratified and reinforced--by and

[3] The "legal authorities" here are, of course, not merely those who helped pass the 1954 Act, but every school district and its school superintendent and teachers. The social vigilantes are the unwitting children (and sometimes teachers and parents as well).



through the daily recitation by all of our children reciting the words "under God"--the long history of hostility and prejudice against atheists. In essence, the religious majority in this country responded to the Soviet Union's alleged repression of theistic religions abroad by repressing nontheistic beliefs in this country.

As Pres. Eisenhower said when he signed the 1954 Act into law, "From this day forward, the millions of our school children will daily proclaim in every city and town, every village and rural schoolhouse, the dedication of our Nation and our people to the Almighty." For atheists this sent the message, once again, that they are outsiders and not full members of the community. For those who believe in the Bible this provided a message too: that they and they alone were "correct" in their religious beliefs—their God would, henceforth, be daily recognized by schoolchildren throughout the nation. This of course flies directly in the face of the First Amendment.

## III. ARGUMENT

### A. THE GOVERNMENT SHOULD END ITS COMPLICITY IN THE CULTURAL HOSTILITY TOWARD ATHEISTS BY REFUSING TO ENDORSE THEOLOGICAL DOCTRINES THAT LINK MORALITY, CITIZENSHIP AND PATRIOTISM TO GOD BELIEFS.

The Establishment and Free Exercise Clauses of the First Amendment to the United States Constitution require that "government neither engage in nor compel religious practices, that it effect no favoritism among sects or between religion and nonreligion,[4] and that it

[4] Atheism is entitled to protection under the First Amendment like any philosophy regarding religion. Malnak v. Yogi, 592 F.2d 197, 205-206 (3d Cir. 1979) (Adams, J., concurring). A religion addresses (continued)

work deterrence of no religious belief." Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 305 (1963) (Goldberg, J., concurring). "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' *Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.*" Id. at 220, *quoting* Torcaso v. Watkins, 367 U.S. 488, 495 (1961) (emphasis added).

"Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message. *See generally* Abington Sch. Dist. v. Schempp, 374 U.S. 203 (1963)." Lynch v. Donnelly, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring) (applying the Lemon test).

"The government acts unconstitutionally when it sends a message of 'endorsement' of one religion over another, or of religion in general.' Destefano v. Emergency Hous. Group, Inc., 247 F.3d 397, 410 (2d Cir. 2001); *see also* Wallace v. Jaffree, 472 U.S. 38 (1985). Further, "no person can be punished for entertaining or

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fundamental and ultimate questions having to do with deep and imponderable matters, which consists of a belief-system as opposed to an isolated teaching. Id. at 208. Moreover, a religion, to be entitled to protection, need not recognize a supreme being. Torcaso v. Watkins, 367 U.S. 488 (1961). Nor must a religion arise from a "traditional" or "organized" religion. Frazee v. Illinois Dept. of Employment Sec., 489 U.S. 829 (1989); Africa v. Pennsylvania, 662 F.2d 1025, 1032 (3d Cir. 1981), *cert. den.*, 456 U.S. 908 (1982).



professing religious beliefs or disbeliefs, for church attendance or non-attendance. .... Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'" Torcaso, *supra*, 367 U.S. at 493, *quoting* Everson v. Bd. of Educ., 330 U.S. 1, 15-16 (1947). This also means the state may not "pass laws which aid one religion, aid all religions, or prefer one religion over another." Id.

Those supporting Petitioners' position argue that state-sanctioned god belief is supposedly nothing more than a benign "ceremonial deism." However, the supposed benignity and meaninglessness is contradicted by (1) the insertion of a particular god into the Pledge, (2) the legislative history, and (3) the massive outpouring of anger by many Bible believers whenever any instance of these state-supported religious expressions is challenged.[5]

1. **The "God" Referred To In The Pledge Is Not Just Anyone's god; It Is Clearly A Specific god--The Christian God From The Bible.**

The 1954 Act inserts "under God." "God" is capitalized because it is a proper noun--the name of a particular person, place or thing. It is a particular thing because the reference is not to just any god, but to a

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[5] Logically, insertion of "under God" is superfluous since (1) if one believes in this God, then everything is understood to be under Him, or (2) if one does not believe it makes no sense, or (3) if one believe in this God, but not every nation is under Him, how can we say we are any more enlightened or able to freely exercise religion than Nazi Germany (which fervently believed they were under God) or the rogue nations which oppose us in the "war on terrorism"?

particular god. Not Allah, not Krishna, not Brahma, not Siva, not Zeus, not Venus. Instead, the glorification is to "God"--the main deity of the Bible and the object of worship by Christians in this country. Thus, it is no accident that "under God" and not "by our Creator" or "through Providence" was inserted, including the Christian view that God is "above."

These other terms are found in the Declaration of Independence and suggest only a nebulous idea of natural forces, fate and destiny consistent with the Deism of many of the Founders.

As such, the amended Pledge does not merely pay homage to anyone's god (merely pitting theists against atheists), but to the "one true" God as understood by Bible-believers. The argument that all monotheist religions believe in the same god is rendered invalid by the observation that each religion describes a deity very different from the others, each with a specific history, behavior, idiosyncrasies and each of which prescribes different rules for behavior.

The Oxford English Dictionary, the preeminent authority with respect to the history and evolving usage of English by those who speak it notes that the English use of "god" has been influenced by Christianity in at least three important ways: god is now (1) always capitalized when speaking of the Christian God and lowercased when speaking of someone else's god; (2) strictly masculine, and (3) monotheistic. 6 *Oxford English Dictionary* 639 (2d ed. 1989). The *Oxford English Dictionary*, in its more than four pages of 8-point text, defines "god," in pertinent part, as set forth in the Appendix at pp.1a-2a.

Other dictionaries are in accord, *e.g.*, *The Oxford Advanced Learner's Dictionary of Current English* (6th ed. 2000) by A.S. Hornby, Oxford University Press, which



explains that Christianity influenced the use of the word "god" in yet a fourth way: elimination of the preceding definite article of speech (*i.e.*, "the"):

> **"god** /god; *AmE* ga:d/ *noun* **1 (God)** [sing.] (not used with *the*) (in Christianity, Judaism and Islam) the being or spirit that is worshipped and is believed to have created the universe ...."

Id. at pages 551-552.

The Pledge reads "one nation under God," not "one nation under the god," because "God" refers to the Christian God. *See* H.R. Rep. No. 1693, May 28, 1954.

Likewise, *The Barnhart Concise Dictionary of Etymology* (1st ed. 1995) (Robert K. Barnhart, ed., HarperResource, an Imprint of HarperCollins Publishers, Inc.) ("*Barnhart*") provides:

> **"God** or **god** *n.* Old English (about 725) ... The Germanic words for *god* were originally neuter, but after the Germanic tribes adopted Christianity, *God* became a masculine syntactic form. ..."

Id. at page 323.

*Barnhart* also provides, at page 18:

> **"Allah** *n.* 1584, borrowed from Arabic *Allah*, contraction of *al-ilah* the (true) god."

Id. at page 18.[6]

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[6] Note that *Barnhart* does not indicate a lowercase use of "**Allah**" as it does for "**God** or **god.**" This definition of Allah presents the "the true god" with god being lowercase. Could the Pledge be amended in the future to acknowledge the theological doctrines of whatever religious majority may come into legislative power? AFHR contends

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Bible believers authored and passed the 1954 Act. They determined its meaning. And they now have every public school teacher leading every public primary and secondary classroom across our country in this daily inculcation of belief in their God pursuant to law, insidiously displacing the patriotism and citizenship of all Americans whose beliefs are not consistent with those of Bible-believers.

Lastly, although some marginalized groups will defend the Christian insertion to mitigate persecution and to minimize the "outsider" stigma; it is a contrivance to reinterpret God in a pantheistic manner. AFHR merely seeks to restore the Pledge to its neutral pre-1954 patriotic focus and to make clear that no religious group may ever again amend it by coloring it with their own religious views. Any government-supported acknowledgment of a deity in whatever form is a theological swamp that cannot be waded into without

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that when the matter involves daily ritualistic and ceremonial recitation for the conceded purpose of inculcation, the answer must be an emphatic "No!"

Even if we reinterpreted "under God" to mean some amorphous god(s), used to reference anyone's and everyone's god(s), including for instance, God, Allah, Krishna, Brahma, and all their derivatives combined and consolidated into one, then any Christian reciting the Pledge would be committing a sin in reciting it: "Thou shall have no false gods before me." Exodus 20:3. Indeed, if the Bible-believing supporters of the 1954 Act now claim "God" means "god(s)" then either (1) the First Commandment has no meaning, or (2) they are themselves sinning every time they recite the current Pledge. No devout Bible believer would admit to either because "God" in this Pledge is in fact their God, and they need not claim responsibility for anyone else's misconception of their true God, to whom the Pledge refers. Regardless, any state-composed "non-denominational" prayer violates the Establishment Clause even when no child recites it. Engel v. Vitale, 370 U.S. 421 (1962).



unconstitutionally entangling the state in religious doctrines.

**2. <u>The Legislative History Of The 1954 Act Is Replete With The Bible-Believing Majority's Hatred For Atheists</u>.**

On February 12, 1954, upon introducing the bill to insert "under God" (H.J. Res. 243), Rep. Louis C. Rabaut, stressed the need for the nation to affirm a belief in God:

> "... You may argue from dawn to dusk about differing political, economic, and social systems, but the fundamental issue which is the unbridgeable gap between America and Communist Russia is a belief in Almighty God.
>
> "From the root of atheism stems the evil weed of communism and its branches of materialism and political dictatorship. Unless we are willing to affirm our belief in the existence of God and His creator-creature relation to man, we drop man himself to the significance of a grain of sand and open the floodgates to tyranny and oppression.
>
> "An atheistic American, ... is a contradiction in terms.
>
> "This country was founded on theistic beliefs, on belief in the worthwhileness of the individual human being which in turn depends solely and completely on the identity of man as the creature and son of God. The fraudulent claims of the Communists to the role of champions of

social, economic, and political reform is given the lie by their very own atheist materialist concept of life and their denunciation of religion, the bond between God and man, as 'the opium of the people.' . . .

"It is therefore, most proper that in our salute to the flag, the patriotic standard around which we rally as Americans, we state the real meaning of that flag. From their earliest childhood our children must know the real meaning of America. Children and Americans of all ages must know that this is one Nation which 'under God' means 'liberty and justice for all.'"

100 Cong. Rec. 1700 (1954).

Whether the 1954 Act was politically necessary during the Cold War is doubtful. Certainly, loyal American citizens should never be sacrificed to political expediency.[7]

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[7] Amicus National School Boards Association ("NSBA") argues that "with knowledge of the context, [a reasonable observer] would [not] think that the state has endorsed religion." NSBA Brief at p.5. The "context" to which they refer is not, of course the legislative history.

A requirement that all teachers lead the class in this "pledge/prayer" hardly leaves teachers "free" to educate. NSBA would not likely support a history teacher in implementing "a lesson plan" that included daily reciting the Pledge with the insertion of "under no God" based on the historical support that many Founding Fathers were atheists.

Ironically, although the NSBA first argues that the 1954 Act's insertion must be understood "in context," it later repudiates considering it in context: "That legislative action [1954 Act] sheds no

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On June 22, 1954, in a ceremony celebrating the amendment to the Pledge, attended by Sen. Homer Ferguson (who sponsored the Senate version of the bill) and Pres. Dwight Eisenhower, the Senate Chaplain, Frederick Brown Harris, had this to say:

"The results of blasphemous denials of God on a tremendous scale already are being shudderingly shown by the baneful social pattern of atheistic materialism. Suspicion begins to grow that it is not the believer who is irrational, but the cynical denier." The chaplain was followed immediately by Pres. Eisenhower, who expressed no disapproval of such remarks. 100 Sen. Cong. Rec. 8618 (1954).

It is no coincidence that in 1953, at the beginning of the Sen. Joseph McCarthy anti-Communist crusade, The Selected Works of Tom Paine was included in a list of books to be banned from State Department libraries by order of Secretary of State John Foster Dulles on the charge that the books were by "authors who obviously follow the Communist line or participate in Communist front organizations." *The National Experience: A History of the United States*, 2d ed., John M. Blum, ed., N.Y.: Harcourt, Brace & World, Inc., 1968, p. 800. Paine, a Revolutionary War hero, was hardly a communist, but

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light on the context in which the Pledge actually is used in public schools or, more particularly, whether the context demonstrates endorsement of religion." Id. at 9, section I.B.; *compare with* p.5.

The NSBA also attempts to muddy the waters by insinuating that Respondent or those supporting Respondent argue "the Pledge is an ineffective vehicle for transmitting democratic values...." Id. at 22. That is simply not the case; this issue reaches the Court because all parties agree that the Pledge is a very important indoctrination and it ought to involve our shared values, not the religious majority's beliefs.

he did write a critique of Christianity, *The Age of Reason*, which earned him the public's lifelong hostility (*see* p. __).

Rep. John Ashcroft offered this amendment to the Civil Rights Act of 1963: "Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to refuse to hire and employ any person because of said person's atheistic practices and beliefs." Debated on February 8, 1964, in the House, where it passed 137 to 98, but it failed in the Senate. Bryan F. LeBeau, *The Atheist: Madalyn Murray O'Hair*, N.Y. Univ. Press, N.Y. & London, 2003, pp.105-108. The history of that time is replete with similar hostility toward atheists.

### 3. The Religious Majority Has An Irrational Hatred For Atheists.

In County Of Allegheny v. ACLU, Justice Kennedy, dissenting from the majority ruling favoring a Christian display on public property, noted that the display would make an atheist feel "out of step with the political norm." 492 U.S. 573, 673-674 (1989). The 1954 Act not only places atheists "out of step," it pushes them out of the line.

This state-supported marginalizing of atheists has, through force of law, decreed that atheists are "out of step." Of all the demographic groups in the United States, atheists rank at the bottom in terms of public acceptance. Pew Study, *supra*. This is not the result of anything atheists have done; but is the result of centuries of religious persecution which continues to be actively promoted by the 1954 Act.

The Pew Study showed that only 46% of the public would vote for a well qualified atheist for President even if from their own party. Support for candidates from other groups were: Muslim 56%, Evangelical Christian 79%, Jewish 85%, Catholic 90%.



### 4. History Is Replete With Examples Of This Hatred Of Atheists, Primarily By Christians.

There are numerous examples of how this prejudice is reflected and exacerbated with either direct or implied state approval, especially where patriotism is involved. To cite a few:

Rabbi Daniel Lapin, founder of Toward Tradition, a fundamentalist Jewish-Christian organization dedicated to ridding the nation of secularism, was honored with an invitation to participate in a bipartisan prayer breakfast opening the 100th Congress, where he spoke about the need for devotion to God and called atheism evil. Rabbi Lapin is a prolific writer and sought-after speaker. His Toward Tradition has run ads claiming nonbelievers ("secular fundamentalists") to be a danger to America, without courage or confidence, and unable to recognize evil or to understand this nation's enemies. *New York Times* ad, Nov. 13, 2001 (*see* http://www.towardtradition.org accessed 2-8-04).

Applications for membership in the Veterans of Foreign Wars and American Legion require agreement that god beliefs are part of the definition of patriotism, thereby disallowing membership to atheists, no matter how heroic their service record.

Boy Scouts of America ("BSA"), chartered by Congress, with the President of the U.S. its nominal Commander in Chief, and receiving many government perks, denies membership to atheists based on its policy, which states: "The recognition of God as the ruling and leading power in the universe and the grateful acknowledgment of His favors and blessings are necessary to the best type of citizenship." Although the Court has ruled that BSA is a private organization and therefore may deny membership to certain groups, the continued official government recognition and support

implies acquiescence with BSA anti-atheist, anti-gay policies. Boy Scouts of Am. v. Dale, 530 U.S. 640 (2000).

Prior to passage of the Fourteenth Amendment, many states had constitutional prohibitions against atheists holding office. Some states retained them, removing them only after a successful challenge. Only about four are left: Arkansas, Pennsylvania, Texas, and Mississippi.

Challenging such laws can be extremely burdensome, as in the case of atheist Herb Silverman, a mathematics professor who applied to be a notary public. However, South Carolina's Constitution provided that "[n]o person who denies the existence of a Supreme Being shall hold any office...," in direct contravention of the Court's holding in Torcaso, *supra*.

His application was denied, based on the state constitution. After a long and costly battle, Silverman prevailed. Silverman v. Campbell, 486 S.E.2d 1 (1997).

In 2003, Silverman again tested the willingness of his community to be inclusive of atheists. He asked to be allowed to give a secular invocation at a meeting of the Charleston city council, which always started with a prayer. Only one council member agreed and he invited Silverman to give an invocation on March 25, 2003.

Before Silverman could speak, several council members walked out. They walked back in as he finished, in time to recite the Pledge of Allegiance. One of them explained later that an atheist giving an invocation is an affront to our troops, who are "fighting for our principles, based on God." *Charleston Post and Courier*, March 27, 2003, "Some at city council snub atheist's invocation."

One council member cited Psalm 14:1 from the Bible as justification for the walkout: "The fool says in his heart, 'There is no God.' They are corrupt, their deeds are vile; there is not one who does good." An account of this incident and how this council member and like-minded



colleagues showed their hatred of atheists is at: http://charleston.net/stories/pr1403/com_14silverman.shtml accessed 2-7-04.

A similar religion-based slander was in a news report of claims that the Catholic Church in China was being persecuted. A Catholic official was quoted as saying, "If a person has no religious beliefs, he can't be a moral person. If he's not a moral person, he cannot live in a moral society." *Minneapolis Star Tribune* ("*Minn. Star*") June 6, 1995.

The persistent propaganda, based on religious beliefs but encouraged by blatantly religious rituals excused by "ceremonial deism," maintains hostility toward atheists. It is indeed a courageous (and rare) politician who will take a stand on behalf of atheists.

**5. Politicians Routinely Simply Assume Everyone Should Believe In God, So Protection Of Atheistic Rights Is Left For The Rare And Courageous Politician.**

Former Governor Jesse Ventura of Minnesota was unique in this respect. His principled actions deserve to be recognized and applauded. In 1999 and 2000, he refused to declare May 5 and May 4, respectively, a National Day of Prayer for Minnesota. *Minn. Star*, June 25, 1999; April 27, 2000. "Your prayer and your religion is your personal choice," Ventura said. Id.

In June 1999, he expressed opposition to allowing schools to post the Ten Commandments in public school classrooms. *Minn. Star*, June 25, 1999. In May 2002, he vetoed a bill passed by the Minnesota legislature that required public school students to say the Pledge (as amended by the 1954 Act). *Minn. Star*, July 4, 2002. On July 3, 2002, he signed a proclamation on behalf of this amicus, Atheists For Human Rights, declaring July 4,

2002, "Indivisible Day." *Minn. Star* and *St. Paul Pioneer Press*, July 4, 2002. *See* the Appendix at pp.2a-3a.

Each of these was met with severe criticism from conservative religious groups who wanted their particular beliefs honored by government. Ventura was accused of "attacking" religion and not "honoring prayer." He said each time that he was motivated by respect for state-church separation, the rights of atheists, and *the freedom of all citizens to have whatever religious beliefs they wished without government preference.* Id. His book, "*Do I Stand Alone*," includes an outspoken summary of his views on religion and government. *See* the Appendix at pp.3a-4a.

Petitioners argue governmental promotion and support of a belief in God does not infringe on the liberties of those without god beliefs. Pres. George W. Bush indicated as much when he said in his State of the Union address on January 7, 2004: "Every citizen of America has an obligation to learn the values that make us one nation: liberty and civic responsibility, equality under God, and tolerance for others." *See* http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html accessed 2-6-04.

This may allude to the President's position on *Newdow*. The condescending nature of this "tolerance" effectively marginalizes and stigmatizes non-believers and other-believers--the "others" of this nation for whom the President's desire for "tolerance" is belied by his insistence that this nation is "under" his God. His remarks are not consistent with the inclusive spirit of this nation's founding.

George Washington deplored the same sort of condescension toward Jews when he said in a letter to the congregation of Touro Synagogue, Newport, Rhode Island, in August, 1790:



> "It is now no more that toleration is spoken of as if it was by the indulgence of one class of the people that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that those who live under its protection should demean themselves as good citizens in giving it, on all occasions, their effectual support."

Gorton Carruth and Eugene Ehrlich, eds., *The Harper Book of American Quotations*, N.Y.: Harper & Row, 1988, p. 500. Is there any basis for marginalizing non-believers as morally suspect, to be, at best, tolerated?[8]

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[8] "[T]he school district's supervision and control of a high school graduation ceremony places *public pressure, as well as peer pressure.... This pressure, though subtle and indirect, can be as real as any overt compulsion. ... But for the dissenter of high school age, who has a reasonable perception that she is being forced by the State to pray in a manner her conscience will not allow, the injury is no less real. ...* ***It is of little comfort to a dissenter, then, to be told that for her the act of standing or remaining in silence signifies mere respect, rather than participation.*** What matters is that, given our social conventions, a reasonable dissenter in this milieu could believe that the group exercise signified her own participation or approval of it." Lee v. Weisman, 505 U.S. 577, 593 (1992) (Blackmun, J., concurring, Stevens, J. and O'Connor, J., joining) (emphases added).

"'Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, **by keeping their respective functions entirely separate**.' Religious Liberty, in Essays and Speeches of Jeremiah S. Black 53 (C. Black ed. 1885) (Chief Justice of the Commonwealth of Pennsylvania)." Id. at 606 (concurrence by Blackmun, joined by Stevens and O'Connor) (emphases added).

There is no basis for marginalizing non-believers as morally suspect, to be, at best, tolerated. Toleration does not mean providing the minority with the option of remaining silent while the religious majority requires teachers to lead the entire class in daily recitation of what used to be a neutral Pledge of Allegiance to this country's flag and the ideals that it represents.

Additionally, it is apparently being overlooked that teachers, regardless of their religion, are required (and therefore not necessarily "willing") to lead the entire class in reciting in unison the Pledge. Teachers who believe in God have no right to proselytize pupils and teachers who do not believe in God have the right not to be drawn into a religious ritual.

Indeed, the questions as to which this Court granted certiorari, 124 S.Ct. 384; 157 L.Ed.2d 274, misapprehends that children as young as five years old are or can be "willing students" when they are daily led, in unison with their peers by the authority of their teachers as a class in reciting the Pledge. What do children do when an authority figure leads? They follow.

When one considers that overruling the Ninth Circuit may one day allow any new religious majority to trample on the rights of Christians in just this same manner, one wonders why no god-believing organizations have filed a amicus in support of Respondent.

**B. <u>THE NINTH CIRCUIT'S RULING IS CONSISTENT WITH THE EVOLUTION OF JUDICIAL OPINION TOWARDS ENSURING THAT THE EQUAL PROTECTION CLAUSE APPLIES TO ALL CITIZENS</u>.**

The Court now has an opportunity to begin to redress the social and political harm done to atheists by past governmental actions, just as it has for other minority



groups.

Advocates of state-supported religious expressions make much of the Declaration of Independence, but it is not a governing document. It is a political broadsheet, a rallying cry. As such, it is an inspiring historical document. However, its declaration that "All men are created equal; that they are endowed by their Creator with certain unalienable Rights, that among these, are Life, Liberty, and the pursuit of Happiness" was intended to be inspirational, and so it was more visionary than factual. Although much progress has been made towards the ideals it expresses, those ideals remain to be fully realized in many ways. It has taken many amendments to the Constitution, a protracted and bloody Civil War, many Congressional enactments and many decisions of this Court to bring the vision of the Declaration of Independence closer to reality.

"All men" meant literally only men, not women, and only white men, not blacks, and only white men who owned property. Patriarchal control of women was oppressive and legally entrenched, as was white slaveowners' control of blacks. These were just the most obvious of this nation's shortcomings in its foundational promises of liberty.

The argument that inserting "under God" is not endorsement, just "commemoration" is without merit because "commemoration" of any of a myriad of historically accurate but sharply divisive and offensive things would be equally violative of the Constitution.

Despite this, the historical record indicates that the Founders hoped the rights they championed would become more than inspiring rhetoric. The "Creator" was a deistic god--hardly distinguishable from no god and certainly not the Christian God. Indeed most church leaders of the time saw no difference between deism and

atheism. *The National Experience*, *supra*, at p.252.

George Washington's Deism is a good example of how this kind of god was viewed. He practically never referred to "God," using instead the impersonal term, "Providence." That he did not see this as a personal deity is evident in his use, interchangeably, of he, she and it in references. *See, e.g.*, James Thomas Flexner, *George Washington: Anguish and Farewell (1793-1799)*, Boston: Little, Brown and Company, 1972, p. 490. This was a deity that created the universe, then left it to itself and the efforts of humans. Those efforts include persistent struggle for the right to life, liberty and the pursuit of happiness. The genius of our democratic Constitution with its Bill of Rights is that it has made such struggle possible and bit by bit eventually successful. The Court has done much to help by adhering to the ideals of the Constitution and protecting minorities in all ways contemplated by the Founders. There is no need to cite the many decisions that have liberated racial minorities, women, working people, sexual minorities, the disabled and others. They are well known.

Also well known are the Court decisions supporting oppression that have been reversed when the reality of the harm done became apparent. Decisions supporting slaveholding and forcing Jehovah's Witnesses to say the Pledge of Allegiance are examples. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943). State-church separation has been a notable sticking point as the Court has sought to accommodate religious demands, while perhaps not realizing how this marginalized atheists.

In Lawrence v. Texas, 123 S.Ct. 2472, 2483 (2003) the Court reversed Bowers v. Hardwick, 478 U.S. 186 (2003) (which had upheld Georgia's statute prohibiting oral and anal sex, whether by homosexuals or heterosexuals). It



had rejected a right to privacy based on a "community consensus" on morality. Lawrence reversed the idea that majority perceptions can justify the denial of rights for a minority. Id.

In Lawrence, Justice Kennedy, supporting reversal, noted that centuries of majority hatred of homosexuality ***based on religious views*** had driven discrimination against homosexuals. Justice O'Connor, also supporting reversal and noting the element of hatred said, "We have consistently held, however, that some objectives, such as a bare desire to harm a politically unpopular group, are not legitimate state interests. When a law prohibits such a desire to harm a politically unpopular group, we have applied a more searching form of rational basis review to strike down such laws under the equal protection clause." Id. at 2485.

It cannot be argued that putting "under God" in the Pledge was based on a bare desire to uphold religious views when both the legislative history and the history of the time show such a virulent anti-atheism that there was clearly "a bare desire to harm a politically unpopular group" based on religious views.

Indeed, the Pew survey cited earlier in this brief, which showed only 46% of the public would vote for an atheist candidate from their own party, also reported that a Gallup poll in 1958 (the Cold War era during which "under God" came into the Pledge) showed only 18% support for an atheist candidate.

"Under God" as well as all other state authorized religious expressions cannot be said to be beneficial to the nation. At best, such expressions can only satisfy the desire of particular religious groups to have their beliefs validated by the state to the detriment of minority religious views (and ultimately to the detriment of all on account of the divisiveness and discriminatory treatment

thereby promoted).

The Pledge of Allegiance for most of its existence until 1954 (including during World War II, the most patriotic of times) was to "one Nation indivisible." How did inserting "under God" benefit the nation? It did not. It only reinforced and helped justify the long-standing cultural hostility toward atheistic citizens.

The benefit to a strict separation of church and state is to provide and preserve a community where citizens of all religious opinions can live and work together with mutual respect, without the state validation of some that necessarily marginalizes and alienates others. Thomas Jefferson envisioned such a community. He wrote voluminously to prove not only that Christianity was not part of the law of the land, but that religion was purely a private matter, not cognizable by the state. Leonard W. Levy, *Treason Against God: A History of the Offense of Blasphemy*, N.Y.: Schocken Books, 1981, p. 335.

Is there any justification for the dismissive treatment of atheist citizens, as evidenced in this brief? History gives us one shining example of what an entire community of nonbelievers can be like. In the hill country of Texas there is a monument to German immigrants who came in the 1800s seeking freedom from the oppressive religious and political autocracies of Europe. They were nonreligious and called themselves Freethinkers. During the Civil War they were staunch supporters of the Union and fierce opponents of slavery. The monument, inscribed "Treue der Union" (True to the Union), marks the mass grave of 36 of the community's young men who were massacred by the Confederate army as they tried to escape to Mexico to avoid conscription to serve a cause they detested. Today, in Comfort, Texas (one of the towns founded by the Freethinkers), there is a cenotaph commemorating the entire community for its exemplary



citizenship and patriotism. Their story makes "Atheistic American" not a contradiction in terms, as the supporters of the 1954 Act would have it, but a designation of pride and honor. For the inscription on the cenotaph plaque, see the Appendix at pp.5a-6a.

### C. THE FOUNDERS DID NOT INTEND RELIGION TO BE USED BY GOVERNMENT TO DISADVANTAGE NON-RELIGIOUS CITIZENS.

A major thrust of advocates of state validation of religion is that this is a Christian nation and the nation's Founders welcomed religion into government operations.

Quotations from founders can be cited for and against this view. Generally, statements implying support for governmental religiosity were made to the public, while statements rejecting religion (with many scathing condemnations of Christianity) were made in private to avoid political repercussions from a wrathful clergy.

An example of this duality is the behavior of Pres. Abraham Lincoln. Although his public statements suggested support for religion, his law partner, William H. Herndon, wrote that Lincoln was known among his associates as "an avowed and open infidel, and bordered on atheism." Glen E. Thurow, *Abraham Lincoln and American Political Religion*, Albany N.Y.: State University of New York Press, 1976, p. 12.

He noted that, "Lincoln was very politic, and a very shrewd man in some particulars. When he was talking to a Christian, he adapted himself to the Christian ... he was at moments, as it were, a Christian, through politeness, courtesy, or good breeding toward the delicate, tender-nerved man, the Christian, and in two minutes after, in the absence of such men, and among his own kind, the same old unbeliever." Id.

Many of the Founders were Deists, much concerned

that religion and government is kept separate. They opposed religious institutions, fearing their political power.

An example of this is Jefferson's letter to Baron von Humboldt in 1813, in which he said, "History I believe furnishes no example of a priest-ridden people maintaining a free civil government. This marks the lowest grade of ignorance, of which their political as well as religious leaders will always avail themselves for their own purpose." George Seldes, ed., *The Great Quotations*, Secaucus, N.J.: Citadel Press, 1983, p. 370.

Jefferson made it clear that the United States was not a Christian nation, nor should it be. William G. McLoughlin, *Soul Liberty, The Baptists' Struggle in New England*, 1630-1833. Hanover and London: Brown University Press, University Press of New England, 1990, p. 259.

In a letter to Dr. Thomas Cooper, Feb. 10, 1814, Jefferson argued against the claim that this nation's laws are based on Christianity and the Ten Commandments, citing historical data showing our laws are based on the pre-Christian common law of England. He called a document claiming the Ten Commandments are part of that common law "a manifest forgery." Andrew A. Lipscomb, ed., *The Writings of Thomas Jefferson*, Vol. XIV, Washington D.C.: The Thomas Jefferson Memorial Association, 1903, pp. 85-97. See Appendix at pp. 6a-8a for additional writings by Jefferson on the dangers of government endorsement of religious views.

Jefferson's assertion that this is not a Christian nation is supported by the Treaty of Tripoli, 1796-1797, Article 11 begins: "As the government of the United States of America is not in any sense founded on the Christian Religion--as it has itself no character of enmity against the law, religion or tranquillity of Musselmen Muslims]



...." Hunter Miller, ed., *Treaties and Other International Acts of the United States of America*, Vol. 2, 1776-1818, U.S. Government Printing Office, Washington D.C., 1931, p. 365.

John Adams wrote in "A Defence of the Constitutions of Government cf the United States of America" (1787-1788), "The United States of America have exhibited, perhaps, the first example of governments erected on the simple principles of nature; ...it will forever be acknowledged that these governments were contrived merely by the use of reason and the senses." Adrienne Koch, ed., *The American Enlightenment: The Shaping of the American Experiment and a Free Society*, N.Y.: George Braziller, 1965, p. 258.

James Madison opposed all mixing of religion and government. He opposed chaplaincies for Congress but they were established sixteen years before the Bill of Rights. Madison deplored that action. He said, "Is the appointment of Chaplains to the two Houses of Congress consistent with the Constitution, and with the pure principle of religious freedom? In strictness the answer on both points must be in the negative. The Constitution of the U.S. forbids everything like an establishment of a national religion. The law appointing Chaplains establishes a religious worship for the national representatives, to be performed by Ministers of religion, elected by a majority of them, and these are to be paid out of the national taxes. Does this not involve the principle of a national establishment...?"

As for the likelihood that unpopular religions would not be allowed to provide chaplains (still an issue today), Madison said, "*To say that his religious principles are obnoxious or that his sect is small, is to lift the veil at once and exhibit in its naked deformity the doctrine that*

*religious truth is to be tested by the numbers, or that the major sects have a right to govern the minor.*"

Madison's view of religious proclamations is, like that of Jefferson's cited earlier, especially relevant to the issue raised in *Newdow* of state authorized but not mandated religious activities. He said, "Religious proclamations by the Executive recommending thanksgivings and fasts are shoots from the same root with the legislative acts reviewed. Altho' recommendations only, they imply a religious agency, making no part of the trust delegated to political rulers." Irving Brant, *The Bill of Rights: Its Origin and Meaning*, Indianapolis: Bobbs-Merrill Co., Inc. 1965, pp. 423-424.

One analysis of Madison's writings has these comments on Madison's seeming reference to the establishment of a "national" church:

> "... Madison had an expansive intention when he used the term national. He believed that 'religious proclamations by the Executive recommending thanksgivings and fasts ... imply and certainly nourish the erroneous idea of a national religion.' He commented in a similar way about chaplains for the House and Senate."

Robert S. Alley, ed., *The Supreme Court on Church and State*, N.Y.: Oxford University Press, 1988, p. 13. A common thread running through the Founders' statements is that this nation should be *inclusive* of all religious opinions.

George Washington, for example, did not accept the marginalization of atheists or any other group. In a letter to Tench Tilghman, March 24, 1784, he said, of hiring workers for his Mount Vernon estate: "If they are good



workmen, they may be of Asia, Africa, or Europe. They may be Mohometans, Jews or Christians of any Sect, or they may be Atheists." Washington was said to be "a total stranger to religious prejudices, which have so often excited Christians of one denomination to cut the throats of those of another." Paul F. Boller, *George Washington & Religion*, Dallas: Southern Methodist University Press, 1963, p. 118.

Thomas Paine wrote in *Common Sense* (1776), "As to religion, I hold it to be the indispensable duty of government to protect all conscientious protesters thereof, and I know of no other business government has to do therewith." Ronald C. White and Albright G. Zimmerman, *An Unsettled Arena: Religion and the Bill of Rights*, Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1990, p. 72.

Paine's own conscientious protests were not protected. His critique of Christianity in *The Age of Reason* earned this major Revolutionary War hero social ostracism of such intensity that his life became "a wretched existence." *Internet Encyclopedia Of Philosophy* http://www.utm.edu/research/iep/p/paine/htm accessed 2-8-04.

Finally, no matter how many quotations one can find for and against religion in government, the fact remains that this nation's founding governing document, the Constitution, is entirely secular, the first in the history of the world to separate religion from government.

The most telling argument that the Founders did not want religion in government is the Constitution itself, where not even the President's Oath of Office mentions any god. All Presidents have added "so help me God" only as a personal preference. As a nation, we have been from our founding, one nation under the Constitution. As a practical matter, the amorphous nature of deities makes

it prudent for government to leave the matter entirely in private hands.

Many religions, to their credit, accept this wholeheartedly. Yet, there are others that still resist a secular government and seek to have their particular beliefs incorporated in law and public policy. They remain a source of conflict as they exert political pressure in pursuit of foisting their religious beliefs on the rest through our mutual government.

Recognizing the reality of public opinion and political pressure, this nation's Founders were wise to create a judiciary that was not subject to such pressure. The Court is free to do what is right, not necessarily what is popular.

## IV. CONCLUSION

The The Ninth Circuit Court's decision should be affirmed to protect the constitutional rights of atheists and bolster the practical force of the Religion Clauses of the First Amendment

Respectfully submitted,

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## APPENDIX

**6 *Oxford English Dictionary* 639-642 (2d ed. 1989), provides, in pertinent part:**

> "I. In the original pre-Christian sense...
>
> "1. A superhuman person (regarded as masculine: see GODDESS)....
>
> "Even when applied to the objects of polytheistic worship, the word has often a colouring derived from Christian associations. As the use of *God* as a proper name has throughout the literary period of English been the predominant one, it is natural that the original heathen sense should be sometimes apprehended as a transferred use of this; 'a god', in this view, is a supposed being put in the place of *God*, or an imperfect conception of *God* in some of His attributes or relations.
>
> "Besides having been thus modified by the influence of the Christian use, this sense as expressed in the definition has been affected by the pagan uses of L. *deus* and Gr. *Vεός*, of which *god* is the accepted rendering. ...
>
> * * * *
>
> "II. In the specific Christian and monotheistic sense. The One object of supreme adoration; the Creator and Ruler of the Universe. (Now always with initial capital.)
>
> * * * *
>
> "6. As an appellative.

* * * *

"**b.** ... the One True God is contrasted with the false gods of heathenism.

* * * *

"**III.** Phraseological uses of sense 5.

* * * *

"**d.** ***under God***: as a secondary cause or mediate object of gratitude.

"...**1619** [citation omitted] The blessedness of this good work, under God, is to be attributed to the king alone.

"**IV.** *attrib.* and *Comb.*

"**16.** Substantive combs. ...

"**c.** possessive ... **God's body**, the sacramental bread; **God's book**, the Bible."

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**Proclamation by Gov. Jesse Ventura declaring July 4, 2002, Indivisible Day in the State of Minnesota:**

WHEREAS, the unique feature of this nation at its founding was its establishment of a secular Constitution that separated government from religion-something never done before; and

WHEREAS, our secular Constitution has enabled people of all worldviews to co-exist in harmony, undivided by sectarian strife; and

WHEREAS, Pres. James Madison made clear the importance of maintaining this harmony when he said, "The purpose



of separation of church and state is to keep forever from these shores the endless strife that has soaked the soil of Europe in blood for centuries"; and

WHEREAS, the diversity of our people requires mutual respect and equal protection for all our citizens, including minority groups, if we are to remain "one nation, indivisible"; and

WHEREAS, it is the unfettered diversity of ideas and worldviews that have made our nation the strongest and most productive in the world and;

WHEREAS, eternal vigilance must be maintained to guard against those who seek to stifle ideas, establish a narrow orthodoxy, and divide our nation along arbitrary lines of race, ethnicity and religious belief or non-belief:

NOW, THEREFORE, I, JESSE VENTURA, Governor of Minnesota, do hereby proclaim that Thursday, July 4, 2002, shall be observed as:

**INDIVISIBLE DAY**

in the State of Minnesota.

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**Excerpt from "*Do I Stand Alone?*" by Jesse Ventura (former governor of Minnesota), N.Y.: Pocket Books, 2000, p. 104:**

"It's extremely important for a society like ours to keep government and religion separate. But it's tough to do. Take a

dollar out of your wallet and look at it. Whose name is on there? How do you think that makes an atheist feel?

"Church and state are brought together in insidious ways sometimes. I recently gave a talk at Elk River High School, a public school here in Minnesota. But before I got up to give my talk, they had an ordained minister lead everybody in a prayer. Now, it happened to be a prayer in my own religion, Christianity. But imagine how that might have felt to a Muslim or a Hindu?

"I'll show you another way that church and state are inseparable in our minds. How easy do you think it would be for an atheist to get elected in this country? The vast majority of atheists aren't bad people; they have principles and morals. Many atheists even respect the convictions of religious people. What's to say that an atheist wouldn't make a great leader? But in many ways we have a bias against atheists similar to the one we have against gays and lesbians."



**The Texas Hill Country Freethinkers cenotaph plaque inscription:**

THE FOUNDING FREETHINKERS
(Deutsche Freidenker)

From 1845 to 1861 large numbers of German Freethinkers immigrated to the Texas Hill Country. Freethinkers were predominantly German intellectuals who advocated reason and democracy over religious and political autocracy. Many had been active in the 1848 German Revolution and sought freedom in America. The Freethinkers established numerous Central Texas colonies including Bettina, Castell, Cypress Creek, Luckenbach, Sisterdale and Tusculum (Boerne). Settlements which conducted intellectual forums in Latin became known as "Latin Colonies." Within a few years of the founding of Comfort in 1854, half the Hill Country Freethinker population was living in the area. Freethinkers valued their newfound freedom of speech, assembly and separation of religion and government. Instead of religious dogma, Freethinkers believed in individual philosophy. They advocated equal rights for all persons, and that moral values were dominated by respect for life and nature. Many were active in political issues of the day including the rejection of secession and abolition of slavery. Intellectual pursuits

were shared with agriculture and other crafts of physical labor. Secular education and organizations (Vereins) provided social and cultural fulfillment. Existence was peaceful and their influence rapidly expanded. Loyalty to the Union during the Civil War had cost many their freedom and lives. Some Freethinkers relocated to nearby urban areas or other states, and a few returned to Europe. Arrival of the railroad in Comfort in 1887 and other outside factors largely influenced the construction of the first church in 1892. Freethinker origins continue to influence the spirit of the community and surrounding areas.

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**Excerpt from letter from Thomas Jefferson, just before the end of his second term, in a letter to Samuel Miller - a Presbyterian minister - on January 23, 1808:**

> "But it is only proposed that I should recommend, not prescribe a day of fasting and prayer. That is, that I should indirectly assume to the United States an authority over religious exercises, which the Constitution has directly precluded them from. It must be meant, too, that this recommendation is to carry some authority, and to be sanctioned by some penalty on those who disregard it; not indeed of fine and imprisonment, but of



> some degree of proscription, perhaps in public opinion. And does the change in the nature of the penalty make the recommendation less a law of conduct for those to whom it is directed?"

Willson Whitman, arranger, *Jefferson's Letters*, Eau Claire, Wisconsin: E. M. Hale and Company, ND, pp. 241-242.

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**Excerpt from letter from Thomas Jefferson to Thomas Law on June 13, 1814:**

> "... If we did a good act merely from the love of God and a belief that it is pleasing to Him, whence arises the morality of the Atheist? It is idle to say, as some do, that no such thing exists. We have the same evidence of the fact as of most of those we act on, to wit: their own affirmations, and their reasonings in support of them. I have observed, indeed, generally, that while in Protestant countries the defections from the Platonic Christianity of the priests is to Deism, in Catholic countries they are to Atheism. Diderot, D'Alembert, D'Holbach, Condorcet, are known to have been among the most virtuous of men. Their virtue, then, must have had some other foundation than love of God."

From Adrienne Koch, ed., *The American Enlightenment: The Shaping of the American Experiment and a Free Society.* N.Y.: George Braziller, 1965, p. 358.